
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, DIVISION

POWER LINE INDUSTRIES, a Utah
corporation,

Plaintiff,

v.

SPARTAN TOOL, a Delaware limited
liability company,

Defendant.

MEMORANDUM DECISION AND
ORDER

Case No. 2:16-CV-242 TS

District Judge Ted Stewart

Plaintiff Power Line Industries (“Plaintiff”) filed a Complaint against Defendant Spartan Tool (“Defendant”) on March 28, 2016. On June 17, 2016, Plaintiff filed a Motion for Extension of Time to Serve Summons & Complaint on Defendant. Magistrate Judge Furse granted the extension on June 20, 2016, allowing Plaintiff until August 23, 2016, to serve Defendant. Plaintiff did not serve Defendant in the allotted time.

On November 10, 2016, Magistrate Judge Furse issued an order directing Plaintiff to show cause as to why its case should not be dismissed for failure to effect service. The Order further directed Plaintiff to respond in writing by November 24, 2016, and warned that failure to do so would result in dismissal of the Complaint. Plaintiff failed to respond.

Rule 4(m) of the Federal Rules of Procedure states, “[i]f a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time,” unless “the plaintiff shows good cause for the failure.” The ninety-day time period set by Rule 4(m) has long since passed. In accordance with Tenth Circuit precedent, the Court, via Magistrate Judge Furse,

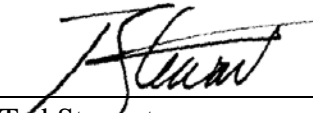
afforded Plaintiff an opportunity to show cause why its Complaint should not be dismissed.¹
Plaintiff's time to respond to Magistrate Judge Furse's Order to Show Cause has long since passed.

It is therefore

ORDERED that Plaintiff's Complaint (Docket No. 2) is dismissed without prejudice for failure to prosecute.

Dated this 11th day of October, 2017.

BY THE COURT:



Ted Stewart
United States District Judge

¹ *Self v. Fresenius Med. Care*, 84 F. App'x 54, 56 (10th Cir. 2003) ("We held that before the district court may dismiss Plaintiff's complaint without prejudice for failure to prosecute under Federal Rule of Procedure 4(m), it must first afford him an opportunity to show cause why the complaint should not be dismissed.").